THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.13690 of 2005

Date: 12.09.2005

Between:

Indian Scrap Traders, Shop No.19-3-1089, Jahanuma, Hyderabad – 5—253 Per G.P.A, Mohd. Younus.

… Petitioner

and

Branch Manger, Metal Scrap Trade Corporation Ltd. 30-15-76, Third Floor, Subbarami Reddy Complex, Daba Gardens, Visahpatnam – 530 020. and two others.

… Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.13690 of 2005

ORDER:

Awarding of the tender, in favour of respondent No.3, is questioned in this writ petition as violating the petitioner's rights under Articles 14 and 300-A of the Constitution of India, as their bid was higher than that of the 3rd respondent.

Facts, to the extent necessary for the purpose of this writ petition, are that the

petitioner, a trading concern dealing in scrap material, participated in the tender process, pursuant to Tender No.MSTC(V)MOD/04-05/T-137, for purchase of scrap material in Lot No.35, on "as is where is basis". The metal scrap in Lot No.35, consisted of unserviceable and condemned items including machinery, weighing 30 Metric Tonnes. The petitioner claims that he was the highest bidder having quoted at the rate of Rs.52,554 per tonne for 20 Metric Tonnes and at the rate of Rs.11,892 for the remaining 10 Metric Tonnes, and that the average price quoted by him for 30 Metric Tonnes was Rs.39,000 per Metric Tonne. It is also stated that the petitioner had paid a sum of Rs.2,29,000/- towards earnest money deposit, had addressed a letter to the respondents on 5-5-2005 reiterating his quotation for the entire tender quantity of 30 Metric Tonnes and had sought for issuance of the acceptance order since his offer was the highest. In reply thereto, the 1st respondent, vide letter dated 9-5-2005, informed the petitioner that his offer was not valid as it was contrary to Clause 5.2 of the General Terms and Conditions of the tender which prescribed that no quotation for part quantity of the material was acceptable in any particular lot. The 1st respondent accepted the bid of Respondent No.3 which, at the rate of Rs.34,077.92 per Metric Tonne, is contended as being Rs.5000/- per metric tonne, totaling to nearly Rs.1.48 lakhs, lower than the petitioner's bid. Petitioner is said to have informed the Central Vigilance Commission at New Delhi, vide letter dated 16-6-2005, about the alleged illegal and irregular disposal of the tender by the 1st and 2nd respondents.

The first respondent, in his counter affidavit, denies that the petitioner was the highest bidder for lot No.35, and submits that the petitioner's offer was conditional and was therefore rejected. It is stated that, on the tenders being opened, the petitioner's representative was informed and explained that the rates quoted by them bifurcating the bid, for Lot No.35 of 30 Metric Tonnes, into two lots i.e., 20 Metric Tonnes for machinery and 10 Metric Tonnes for scrap was in violation of Clause 5.2 of the General Terms and Conditions of the Tender. It is stated that lot No.35 does not comprise only of machinery of 30 Metric Tonnes but of metal scrap consisting of unserviceable and condemned items including machinery. The quotation of the petitioner, with different rates for machinery and scrap, is said to have disqualified their bid from consideration. It is stated that the 1st respondent had replied to the Vigilance Department giving reasons for rejection of the petitioner's tender.

A counter affidavit is filed on behalf of the 2nd respondent wherein it is stated that MSTC – the 1st respondent was acting as a selling agent, on behalf of the Ministry of Defence, Government of India, to call for tenders for the sale of scrap. The Director, DMRL is said to have requested MSTC to sell scrap items of 30 Metric Tonnes (approx) available in the godown of DMRL, Hyderabad. A tender was floated giving wide publicity in the news papers on 24-3-2005, pursuant to which 25 persons offered their rates, of which only four tenders were received for Lot No.35 including those from the petitioner and the 3rd respondent. It is stated that, on the date of opening the tenders, ten persons, including the petitioner and respondent No.3, were present and that the tenders were opened in their presence. It is also stated that the petitioner was informed, at the time of opening of tenders itself, that the rates quoted by them bifurcating 20 Metric Tonnes for machinery and 10 Metric Tonnes for other scrap was in violation of the Clause 5.2 of the General Terms and Conditions of Tender, that lot No.35 comprises of metal scrap of unserviceable and condemned items including machinery, that since the 2nd respondent could not quantify the extent of machinery and the extent of scrap material, in the homogeneous lot No.35, it was treated as one lot instead of bifurcating the lots into various components and was therefore styled as “metal scrap consisting of unserviceable & condemned items including machinery – 30 MT”, that the petitioner deliberately quoted two different rates violating the tender terms instead of quoting an average rate for the entire 30 Metric Tonnes, and their intention in doing so, was only to take delivery at a lower rate. Petitioner’s contention that they had quoted an average rate of Rs.39,000/- per Metric Tonne, is denied. It is also stated that tenderers have no right to issue addendum to the tender documents or to clarify, amend, supplement or delete any of the conditions, clauses or items stated therein.

A Counter affidavit is filed on behalf of the 3rd respondent, wherein, after reiterating the averments made in the counter affidavits of respondents 1 and 2, details are furnished regarding the 3rd respondent’s bid for Lot No.35. It is stated that the 3rd respondent was the highest bidder amongst the duly submitted tender offers. Reference is made to condition No.5.1 of the General conditions, whereunder scrap material was offered by the 1st respondent for sale on “as is where is basis” without any specific detail of individual items in the Lot. It is stated that under clause 5.2 of the General Conditions the bidders are required to quote their rate for the scrap

material on “Lot Basis” and not on “Unit Basis” or “Slab Basis”, and that in terms of condition 5.3, the 2nd respondent, vide letter dated 19.04.2005, had sought the consent of the 3rd respondent to lift the scrap material that might exceed 30 metric tons, to which the third respondent had agreed, vide their letter dated 26.04.2005. It is also stated that though a delivery order dated 25.05.2005 was issued in his favour, upon payment of Rs.11,63,034/- including taxes, the 3rd respondent could not lift the Lot due to non-availability of concerned officials and in the meanwhile, this Court had passed an interim order of *Status quo* on 27.06.2005.

An additional Counter affidavit is filed wherein it is stated that the tender, inviting bids, was for 36 Lots belonging to various owners, out of which Lot No.35 belonged to the 2nd respondent. While the quotation offered by the 3rd respondent, was at Rs.34,077.92/- per metric tone, the quotation offered by the petitioner was bifurcated into two. It is stated that the quotations of the petitioners and the 3rd respondent are not comparable as they contrast in the nature of bidding. While the 3rd respondent’s tender was in terms of the invitation to offer i.e., on Lot basis, the tender of the petitioner was on Unit basis inconsistent with the terms of the invitation to offer.

It is stated that the invitation to offer did not mention that there was S.S.Metal or non-ferrous Metal but only mentioned the Lot as consisting of unserviceable and condemned items including machinery, and since Metal scrap may contain M.S.Scrap (Mild Steel), Copper, Alloys etc., in the event of the petitioner having been granted the bid, there was a possibility of their insisting on delivery of the material as specified by them and not otherwise. It is stated that on the basis of the inspection by their officials, conducted on 20.03.2005, it was noticed that the entire quantity in Lot No.35 is scattered in three different places and consists of miscellaneous Electric and Electronic scrap in the Scrap Yard besides Stores Office, Condemned machinery at work shop in the premises of the 2nd respondent and M.S. Structures lying at the Scrap Yard besides M.T. Section in the premises of the 2nd respondent. The 3rd respondent has compared the aggregate realization of the quotations of the petitioner and the 3rd respondent at 30 metric tone, 35 metric tonnes, 37 metric tonnes and 50 metric tonnes. At 30 metric tonnes, the total rate offered by the petitioner exceeds that of the 3rd respondent by Rs.1,47,662.40 Ps, and at 35 metric tones by Rs.36,732.80ps. However, at 37 metric tonnes of weight,

the amount offered by the 3rd respondent is more than that of the petitioner by Rs.7,639/- and at 50 metric tonnes weight, by Rs.2,96,056/-.

A rejoinder is filed to the counter affidavits, by the petitioner, wherein it is stated that the sale with regard to Lot No.35 was in Unit and Weight basis attracting the provisions of Clause Nos: 5.4 and 5.5 of the General conditions of Tender and that clause 5.3 has no application. It is also stated that officers of the 3rd respondent had initially treated the petitioner's tender as correct and had included it in the comparative statement prepared by them, and if, as contended by the respondent, the petitioner had been informed at the time of opening of the tenders itself that his tender had been rejected, there was no reason for inclusion of the petitioner's tender in the comparative statement. A third party affidavit, from one of the other tenderers who was present at the time of tender opening, is also filed. It is reiterated that the offer made by the petitioner for 20 metric tons at the rate of Rs.52,554/- per metric tone and for 10 metric tons at the rate of Rs.11,892/- per metric tone was the highest offer for Lot No.35 and his quotation worked out at the average rate of Rs.39,000/- per metric tone and the total amount works out to Rs.11,70,000/- as against the offer of the 3rd respondent of Rs.10,22,337.60Ps at the rate of Rs.34,077.92 per metric tonne. The difference, in the total amount quoted, between the petitioner and the 3rd respondent, is said to be Rs.1,47,662.40Ps. It is stated that despite the petitioner having fulfilled all the terms and conditions of the tender, the 1st and 2nd respondents, under the influence of the 3rd respondent, had rejected the highest bid of the petitioner which is contended as being arbitrary and unfair. Reliance is also placed on the Guidelines issued by the Ministry of Defence, Government of India for disposals, in support of the contention that the respondents are bound to issue the delivery order in favour of the petitioner and not in favour of the 3rd respondent. It is contended that the petitioner's offer is not defective as non-acceptance was based on a misconception of the applicability of Clause No.5.2 of the General Terms and Conditions. It is stated that the petitioner was not given an opportunity of being heard before rejecting their highest bid nor were they given an opportunity to clarify any doubt or problems which may have arisen in consideration of the quotation of the 2nd highest bidder. Reliance is placed on Clause 20.10.3.4 of the guidelines issued by the Ministry of Defence, Government of India for disposal, which reads thus:

"Inadvertent deviation of nomenclature under the same generic heading or approximation in quantity will not invalidate a sale. Proportionate refund will have to be made to the purchaser when weight or number delivered is less than quantity paid for".

It is stated that the terms and conditions of the tender, including the guidelines, are in the petitioner's favour and leave no ground for rejection of his tender and that the respondents are trying to cover up their arbitrary action.

Mr. Mir Wajid Ali Kamil, Learned Counsel for the Petitioner, submits that Lot No.35 was for 30 Metric Tonnes and that the petitioner had offered his bid for the entire quantity of 30 Metric Tonnes and as Clause 5.2 has not been violated and as the petitioner's bid was the highest it ought to have been accepted.

Sri K.S.R.Murthy, Learned Counsel for the First respondent, would submit that as per Clause 5.2 of the General Terms Conditions of tender, no quotation of part quantity of material in any particular lot would be accepted and since the petitioner had quoted two different rates for one lot, clause 5.2 of the General Terms and Conditions was violated. Learned Counsel would submit that if the petitioner had quoted the average rate of Rs.39,000/- per Metric Tonne in the tender document, without bifurcating the lots, into two different lots, it would have avoided disputes, and that refund of the EMD to the petitioner was in accordance with clauses 3.4 of the General Terms and Conditions. Learned Counsel would refer to Clause 3.1 of the special condition which provides that conditional and combined offers in the tender will be rejected. It is contended that since the petitioner's tender was not in accordance with the General and Special conditions to tender and was therefore rejected, the question of comparing the rates quoted by him and the 3rd respondent, as also the difference in amount between the two bids, does not arise.

Sri N.V.Raghava Reddy, Learned Counsel for the 2nd respondent reiterates the contentions urged on behalf of the 1st respondent and would submit that rejection of the petitioner's bid and awarding the tender to the 3rd respondent was legal and valid.

Sri T.V.L.Narasimha Rao, Learned Counsel for Respondent No.3, would submit that the petitioner had submitted their tender on "Unit basis" or "Slab basis" and not on "Lot basis" which is in contravention of clauses 3.1 and 3.3 of the special terms

and conditions and clauses 2.6, 15.4, 14.0, 11.2, 5.2 and 5.3 of General Terms and Conditions of the tender. Petitioner's contention, that they had submitted an aggregate bid of Rs.11.70 lakhs, is contended as being misleading, since they had quoted two separate rates, though the tender did not provide for such bifurcation. Condition 5.4, of the General Conditions, is relied upon to submit that the quoted quantity of 30 Metric Tonnes in Lot No.35 is only indicative, and not exact and that the individual contents of the scrap Lot are not identifiable to fix separate rates. Learned Counsel would submit that if the Tender is granted on Unit basis, as quoted by the petitioner, the owner i.e., Respondent No.2 would be benefited only when the aggregate weight of the Lot falls well below 30 metric tons, If the aggregate weight under Lot No.35 exceeds 30 metric tons, then the aggregate realization, calculated on the basis of the petitioner's quotation, falls drastically to the benefit of the petitioner and to the detriment of Respondents 1 and 2. Learned Counsel submits that the 3rd respondent's bid was the highest among the tenders submitted in accordance with the tender conditions and that the 1st respondent had rightly awarded and confirmed the bid of the 3rd respondent, as the highest qualified bidder. Learned Counsel would further submit that the highest bidder, among the duly submitted tenderers, is expected to lift the entire material demarcated and covered under Lot No.35 and is expected to pay for the actual weight which may fall below 30 metric tonns or which may exceed 30 metric tones, and if the per metric tonne rates, are bifurcated, with specification of material, as is done by the petitioner, it would result in changeable average rate calculated out of aggregate realizations. Learned Counsel for the 3rd respondent, would contend that all 36 lots, specified in the tender, are different lots of different items and the whole basis of sale depends on the contents of each lot, that Items, which cannot be described, are offered in terms of their weight and Lot No.35 is one such, and the very fact that the column "rate to be quoted" for Lot No.35 indicates "Rupees per Metric tonne" would mean that one single rate has to be quoted for the entire quantity.

Both Sri K.S.R.Murthy, and Sri T.V.L.Narasimha Rao, learned Counsel for Respondents 1 and 3 respectively, would submit that Clause 5.2 of the General conditions are to be read with Clause 3.1 of the special conditions of tender, and when so read, it is clear that the petitioner's tender was contrary to the tender conditions and was therefore liable to be rejected. On the other hand, learned Counsel for the petitioner, Mr. Mir Wajid Ali Kamil, would refer to the delivery order

dated 25.05.2005 (copy of which was filed by the 2nd respondent) to show that the security deposit sought for from the 3rd respondent was nil, which would itself indicate the actual quantity was only 30 Metric tonnes, for if the quantity had been in excess thereof, the respondents would undoubtedly have insisted on further security deposit being furnished. Learned Counsel would submit that the tender submitted by the petitioner is not conditional.

Before the aforesaid contentions are examined, it is useful to refer to certain clauses in both the General conditions and the special conditions of the tender.

Clause-5 of the General terms and conditions relates to quality and quantity and reads thus:

5.1 The goods will be sold on "As-is-where-is" and "No Complaint" basis so far as the physical condition of the same is concerned. The Tender(s) will, therefore, be deemed to have made themselves aware of the physical conditions, dimensions, size, weight, working conditions etc., by inspecting the material before submitting their tender and no complaint nor any claim in this regard, will be entertained by MSTC after the submission of the Tender.

5.2 Tenders may quote for all or any of the lots mentioned in the Schedule of Rates, but no quotation for part quantity of material in any particular lot will be accepted. Separate Earnest Money shall be payable for each of the lot quoted for.

5.3 Where the goods are sold on "lot" basis and not by unit "weight/number" basis the entire material lying in the lot will have to be lifted by the buyer(s) so as to clear the entire lot. The quantity, if indicated against the respective lots, is purely indicative and MSTC/Owner shall not entertain any claim/complaint from the buyer(s) for any deficiency in quality/quantity/size/dimension or for refund of the whole or any part of the purchase money or loss of profit or interest damages or otherwise.

5.4 Where the goods a sold by unit i.e, weight or number and not on the basis of "lot", the quantity indicated in such cases against the respective lots are purely indicative which is actually may turn out to be more or less than the indicated quantity. In case of the actual quantity turning out to be less than the indicated quantity after due completion of the lifting by the buyer(s), the buyer(s) shall not be entitled to claim any damages, loss of interest or compensation or any other account, but shall be entitled to proportionate refund only.

5.5 Where there are items of more than one classification of any forming any lot and the tenderer has quoted in lump sum for the entire lot instead of quoting in units per item, then no refund of any kind shall be entertained by MSTC/Owners, if the quantity whatever mentioned in the tender turns out to be less at the time of delivery. However, if the quantity turns out to be more than the tendered quantity, then the delivery of materials shall be limited to tendered quantity only.

5.6 MSTC/OWNER reserves the right to accept or withdraw from sale the materials offered for sale in full or part thereof prior to or alter the acceptance of the Tender even after issue of delivery order, without assigning any reason whatsoever.

5.7 MSTC reserves the right to accept or reject the highest tender without assigning any reason and the contract of any or all lots may be allotted by MSTC to one or more than one tenderer as MSTC may deem lit and no claim/complaint in this regard will been entertained by MSTC/Owner.

Clause 3 of the Special terms and conditions read as under:

3.1 Conditional and combined offer(s) in tender are liable to be rejected.

3.2 Tenders submitted without requisite EMD is liable for rejection.

3.3 Acceptance or rejection or deviation of tender terms and conditions shall be finally decided by MSTC/OWNER.

The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. While the State can choose its own method to arrive at a decision and can fix its own terms of invitation to tender, the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot arbitrarily depart therefrom. Courts interference would be justified only if the decision-making process is found vitiated by mala fides, unreasonableness and arbitrariness. Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article 226 with great caution, exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene. ***(Air India Ltd. v. Cochin International Airport Ltd.)***

It is well settled that courts can scrutinise the award of contracts, by the Government or its agencies, to prevent arbitrariness or favouritism. However, there are inherent limitations to the exercise of the power of judicial review in such matters. The extent of judicial review permissible in contractual matters while

inviting bids by issuing tenders, has been examined in depth by the Supreme Court in ***Tata Cellular* v. *Union of India,*** *wherein* the following principles have been laid down:-

> (*1*) The modern trend points to judicial restraint in administrative action.
>
> (*2*) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
>
> (*3*) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.
>
> (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.
>
> (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness, but must be free from arbitrariness not affected by bias or actuated by mala fides.
>
> (*6*) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."

The terms of the tender, prescribed by the Government, ought not to be struck down, merely because Courts feel that prescription of some other terms in the tender would have been fair, wiser or logical. (***Monarch Infrastructure (P) Ltd. v. Commissioner, Ulhasnagar Municipal Corpn.,*; *Directorate of Education v. Educomp Datamatics Ltd.,*).** Tender conditions are in the nature of administrative guidelines or instructions. Thus, the principle in Vitarelli Vs. Seaton, 359 US 535 = 3L Ed. 2nd 1012 (1959), that an executive agency must be rigorously held to the standards by which it professes its actions to be judged and if the tender conditions require strict compliance there can be no relaxation of tender conditions, would apply. (**Godavari Polymers Pvt Ltd Vs. Agricultural Products Commissioner & Principal Secretary, Agriculture & Co-operation (Horti) Department, Govt. of A.P., Hyderabad).** Tender conditions are binding administrative instructions. While interpreting tender conditions, including eligibility criteria, principles which govern statutory interpretation, would apply. It must not be assumed that words are used unnecessarily. It must be presumed that the author of the tender conditions has not

used any superfluous phrases, terms or words. The Apex Court in **Ramana Dayaram Shetty Vs. The International Airport Authority of India,** held:-

"It is well settled rule of interpretation applicable alike to documents as to statutes that, save for compelling necessity, the Court should not be prompt to ascribe superfluity to the language of a document "and should be rather at the outset inclined to suppose every word intended to have some effect or be of some use. To reject words as insensible should be the last resort of judicial interpretation, for it is an elementary rule based on common sense that no author of a formal document intended to be acted upon by the others should be presumed to use words without a meaning. The Court must, as far as possible, avoid a construction which would render the words used by the author of the document meaningless and futile or reduce to silence any part of the document and made it altogether inapplicable."

(**Teja Constructions Vs. Government of Andhra Pradesh)**

Keeping these principles in mind, the contentions urged and submissions made are required to be examined. The contention of the Respondents that Clause 5.2 of the tender condition has been violated by the petitioner, in submitting his tender, is difficult to accept. Clause 5.2 enables tenderers to quote for all or any of the lots, but, however, prohibits quotation for part quantity of the material in a particular lot. Since the total quantity, in lot 35, was for 30 metric tonnes the prohibition, in clause 5.2, would disentitle a tenderer from quoting for a part thereof i.e., for a quantity less than 30 metric tonnes. While it is true that the petitioner had bifurcated his bid, and had quoted at Rs.52,554/- for 20 metric tones of condemned S.S/Stainless Steel/Alluminium comprising non-ferrous machinery such as scrap and for the balance quantity at Rs.11,892/- per Metric tonne upto ground level, the fact remains that the petitioner had quoted for the entire quantity of 30 Metric tonnes and not for a part quantity thereof. Though the procedure adopted, in bifurcated the bid, is no doubt peculiar, clause 5.2 does not prohibit the petitioner from submitting such a bid. Similarly, the submission that clause 5.3 would apply, where the goods are sold on "lot basis and for sale of goods not by lots but by unit, i.e., weight or number, Clause 5.4 and 5.5 alone are applicable, is also to be rejected. Clause 5.3 requires a tenderer to lift the entire material lying in the lot so as to clear the entire lot. Under clause 5.4, while informing that the quantity, indicated in the respective lots was only indicative, tenderers were also informed that no claim would be entertained regarding deficiency, quantity, size or dimension or refund. Accepting

the contention that Clause 5.4 and 5.5 would not apply where the goods are sold on lot basis, would result in startling consequences for, even if the quantity in the lot, is less than the indicated quantity, buyers of Lots would not be entitled even for proportionate refund to which a tenderer would be entitled to in cases where the goods are sold by unit i.e., weight or number. Such an unreasonable construction cannot be placed on the general conditions of tender nor can the Clauses be read in a manner as to discriminate between tenders submitted on Lot basis on the one hand and unit/weight basis on the other. The contention that Clause 5.5 applies only in cases where there are items of more than one classification cannot also be accepted.

While it is true that the order impugned in the writ petition states that the petitioner's tender is rejected in view Clause 5.2 of the general conditions of contract, Sri K.S.R.Murthy, learned Counsel for the 1st respondent, would submit that the petitioner's tender was rejected also for violation of Clause 3.1 of the special conditions of tender which provides that conditional and combined offers in the tender are liable to be rejected. The petitioner's tender for lot No.35 is as under:

TENDER NO.MSTC (V)/MOD/04-05/T-137, DUE FOR OPENING ON 24.03.2005 AT 2.30 PM.

VIII DEFENCE RESEARCH & DEVELOPMENT ORGN., DMRL, KANCHANBAGH, HYDERABAD. Ph.No. 24340051 – Extn.6599/0311.

LotNo.	DESCRIPTION OF MATERIAL	QUANTITY	RATE TO BE QUOTED EXCL TAXES AND DUTIES
35	Metal Scrap Consisting of Unserviceable & Condemned Items including machineries upto ground level.DETAILS AS PER ANNEXURE-I	30 MT	20 MT – Rs.52554/-/PMTBl. Qty at- Rs.11892/-

Rate quoted

1. Condemned S.S. All Co Non-ferrous 20 MT @ Rs.52554 PMT
2. As per weight upto ground level- Bl.Qty @ Rs.11,892 PMT.

While the tender schedule does not provide for bifurcation of the lot into different items and merely states that lot No.35 for 30 metric tones relates to metal scrap consisting of unserviceable and condemned items including machinery, the petitioner's tender bifurcates the bid into two categories. The first for 20 metric tones relating to condemned SS/Aluminium comprising non-ferrous machinery such as scrap and the remaining balance quantity as per weight upto ground level. Though the tender schedule does not indicate that the lot includes 20 metric tonnes of condemned SS/Alluminium comprising non-ferrous machinery, it is the petitioner, who on his own accord, has submitted such a bid. The petitioner's tender is undoubtedly a conditional offer. If, for instance, the condemned S.S/Alluminium comprising non-ferrous machinery, in lot No.35, were to exceed 20 metric tonnes, the petitioner, in accordance with the conditions stipulated by them in their tender, would not be required to take the excess quantity. Such a conditional tender, is liable to be rejected under Clause 3.1 of the special conditions.

Mr. Mir Wajid Ali Kamil, learned Counsel for the petitioner, would submit that the tender submitted by the petitioner is not conditional and that no conditions have been imposed by the petitioner except to bifurcate the total quantity of 30 Metric tonnes into two different rates which is not prohibited by the tender conditions. Learned Counsel would submit that the petitioner had never stated that he would not accept the Lot if the quantity was less than 30 Metric tonnes and that the entries made by the petitioner at the bottom of the tender Schedule under the caption "rate quoted" is only because Annexure-I was not provided to the petitioner. Learned Counsel would further submit that approximation made in the quantity could not be construed as, a condition, rendering the petitioner's tender conditional. Learned Counsel would refer to the comparative statement prepared by the respondents on 04.04.2005, (copy of which is filed at page 11 of the material papers filed by the 2nd respondent), wherein the petitioner's tender has also been included for comparative evaluation. Learned Counsel would submit that if indeed the petitioner's tender had been a conditional one, requiring it to be rejected at the threshold, his tender would not have been taken up for comparative evaluation. Learned Counsel would contend that the very fact the petitioner's tender had been taken up for evaluation would indicate that the petitioner's tender was rejected for extraneous reasons and not on the ground that it was a conditional tender.

It is no doubt true that the 1st respondent, in its order dated 09.05.2005, had informed the petitioner that his tender was rejected for violation of Clause 5.2 of the general terms and conditions of the tender and the said proceedings makes no reference to Clause 3.1 of the special conditions. It is however to be kept in mind that, while interpreting tender conditions, principles of statutory interpretation apply and Courts must always proceed on the premise that the author of the tender condition has not used superfluous phrases, terms or words, or prescribed a condition which is unnecessary or a mere surplussage. It is also well settled that, as long as power exists, mere quoting of a wrong Clause would not be render exercise of power invalid. (**Pine Chemicals Ltd Vs. Assessing Authority**) Applying these settled principles to the case on hand, though Clause 5.2 of the General conditions would not apply, the petitioner's bid is undoubtedly in violation of Clause 3.1 of the special conditions. Since the bid submitted by the petitioner is conditional, rejection of the petitioner's bid by the 1st respondent herein, is in accordance with clause 3.1 of the special conditions and cannot be said to be arbitrary or illegal.

In the absence of any averment, in the affidavit filed in support of the writ petition, it is difficult to accept the contention that Annexure-I of the tender schedule was not furnished to the petitioner which necessitated an entry being made by them at the bottom of the tender schedule. Not only is there no averment to this effect, no correspondence in this regard is referred to nor has any document been filed to show that any such request was made by the petitioner or a protest lodged for failure of the respondents to furnish them a copy of Annexure-I of the tender schedule. Inclusion of the petitioner's name in the comparative statement does not further their cause. The petitioner's tender is in violation of Clause 3.1 of the special conditions and therefore, it is not open for them to plead estoppel or waiver. As stated supra the State, and its instrumentalities, are bound to adhere to the norms, standards and procedures laid down by them and can neither depart therefrom nor waive the conditions prescribed for sale of public property. Since the respondents, in view of the petitioner's tender being in violation of Clause 3.1 of the special conditions, could not have accepted the petitioner's tender, mere inclusion, of the details of the petitioner, in the comparative statement, is of no consequence. In the absence of details, the petitioner's contention that his tender was rejected for extraneous reasons cannot also be accepted. Since the tenders were opened in their presence, tenderers, whose bids were not accepted, are not entitled for a further opportunity of

being heard. The contention of violation of principles of natural justice is also to be rejected. While the price offered is undoubtedly of prime importance, tenders, which do not confirm to the General and Special conditions prescribed, cannot be accepted, merely because a higher price was offered. Larger public interest would require the respondents to ensure compliance with tender conditions and since Clause 3.1, of the Special conditions, has been violated, the higher price quoted notwithstanding, the respondents are justified in not accepting the petitioner's tender. Reliance placed by the petitioner, upon the Ministry of Defence Guidelines, is also misplaced. These guidelines neither from part of the tender conditions nor were they communicated to the tenderers. Such guidelines cannot be pressed into service either to accept or reject a tender.

The Writ petition fails and is accordingly dismissed. Pursuant to the interim orders passed by this Court, the petitioner is said to have deposited, at the rate of Rs.39,000/- per metric tonne, for the entire quantity of 30 metric tonnes, with the respondents. Needless to state that since the action of the respondents, in rejecting the petitioner's bid, has been upheld the said amount along with any other amount, which the petitioner may have deposited with the respondents, shall be refunded to the petitioner within two weeks from the date of receipt of a copy of this order.

Subject to the aforesaid observations, the writ petition fails and is accordingly dismissed. There shall however be no order as to costs.

Date: .09.2005

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RAMESH RANGANATHAN, J

MRKR/ASP